CHEVRON U.S.A., INC.

IBLA 80-678 Decided February 6, 1981

Appeal from decision of the Wyoming State Office, Bureau of Land Management, partially canceling oil and gas lease W 57089.

Reversed and remanded.

1. Oil and Gas Leases: Lands Subject to--withdrawals and Reservations: Effect of

In general, unless the Mineral Leasing Act or a withdrawal or reservation specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing under the Mineral Leasing Act, if the issuance of a lease will not be inconsistent with or materially interfere with the purposes for which the land is withdrawn or reserved.

APPEARANCES: W. M. Balkovatz, Esq., Chevron U.S.A., Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

The appeal is taken from a decision dated May 5, 1980, by the Wyoming State Office, Bureau of Land Management (BLM), partially canceling lease W 57089 which was issued effective January 1, 1977, for 2,360 acres in Sublette County, Wyoming. The decision canceled the lease as to SW 1/4 SW 1/4 NW 1/4 and NW 1/4 SW 1/4 of sec. 20, T. 36 N., R. 109 W., sixth principal meridian, aggregating 50 acres, because BLM had determined that these lands were withdrawn from "all appropriation under the public land laws, including the mineral leasing laws, by Secretarial Order dated December 4, 1906."

The withdrawal referred to is a letter dated December 6, 1906, from Acting Secretary of the Interior to the Commissioner of the General Land Office. The Acting Secretary stated therein that in compliance with a request from the Secretary of Agriculture "I hereby withdraw the

[lands in question] from all forms of appropriation under the public land laws * * * for use as Ranger Stations by the Forest Service."

Appellant correctly points out in his statement of reasons that the Acting Secretary did not mention "mineral leasing" in his withdrawal order, and that in any case, the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, 30 U.S.C. § 181 (1976), did not come into existence until approximately 14 years after the withdrawal. Appellant contends that an oil and gas lease is not an "appropriation" under the public land laws and oil and gas leasing would not be prohibited under the 1906 withdrawal. We agree.

[1] Mineral leasing does not constitute an "appropriation" of the land leased, and, unless a withdrawal or reservation specifically provides otherwise, the withdrawn or reserved land is presumed to be available for oil and gas leasing. Kerr-McGee Corp., 46 IBLA 156 (1980); Noel Teuscher, 62 I.D. 210 (1955). While the issuance of an oil and gas lease is discretionary with the Secretary of the Interior, no lease will be issued where such action would be inconsistent with or materially interfere with the purposes for which the land was withdrawn. Joseph C. Manga, 9 IBLA 319 (1973). There is no indication in the case before us that leasing would detrimentally affect the withdrawn land, nor has the Forest Service raised any objection to leasing. Since the land appears to be available for leasing, the case will be remanded to BLM to determine whether the partial cancellation was in error.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is reversed, and the case is remanded to the Bureau of Land Management for appropriate action consistent herewith.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge